



## Office of the Attorney General

State of Texas

September 13, 1993

DAN MORALES

ATTORNEY GENERAL

Ms. Susan M. Cory  
General Counsel

Texas Workers' Compensation Commission  
Southfield Building, 4000 South IH-35  
Austin, Texas 78704

Open Records Decision No. 619

Re: Whether section 402.083, Labor  
Code, makes confidential information  
regarding an employer's violations of the  
Texas Workers' Compensation Act  
(RQ-458)

Dear Ms. Cory:

You explain that the Texas Workers' Compensation Commission (the "commission") has received a request for all information the commission has on violations of the workers' compensation laws committed by a particular Texas school district since January 1991. You state that the commission has issued notices of possible administrative violations to the school district in accordance with the Texas Workers' Compensation Act (the "act") and that the school district subsequently requested the commission to hold administrative hearings on the alleged violations. *See* Labor Code §§ 415.033, 415.034 (entitling charged party to hearing on timely filed written request). You also state that the hearings will be conducted pursuant to the Administrative Procedure and Texas Register Act, article 6252-13a, V.T.C.S.<sup>1</sup>

You have submitted to us for review copies of the commission's investigative files concerning the school district. You explain that all of the files concern alleged violations that "have occurred in reference to claims of" the school district's employees and that all documents in the files reflect information "obtained or derived directly from the particular [employee] claim files involved in the alleged violations." As a result, various documents in the files not only identify the date and nature of the alleged violations of the act, but the district employees who filed the related workers' compensation claims.<sup>2</sup> You assert that

---

<sup>1</sup>Section 415.034, Labor Code, provides that a hearing on an administrative violation "shall be conducted in the manner provided for a contested case under the Administrative Procedure and Texas Register Act ('APTRA')." *See id.* § 415.021 (generally making applicable to hearings §§ 13 - 14 and 17 of APTRA describing the procedural and evidentiary rules for contested cases); *see also id.* § 415.034(b) (requiring written decisions and orders assessing monetary penalties).

<sup>2</sup>The files primarily contain forms documenting the alleged employer violations or correspondence and orders resulting from the administrative proceedings. In general, the submitted forms indicate the employing school district's name and address, the dates of each alleged violation, and the tracking number and code number assigned to each alleged violation. Where appropriate, the forms also indicate the employee claimant's name, social security number, date of birth, sex, race, ethnicity, marital status, mailing address, home phone number, doctor's name and address, spouse's name and number of dependent children, and hours worked and rate of pay. The forms additionally indicate or summarize the following where appropriate: the name of the employee's supervisor; the employee's rate of pay, weekly hours, and employment history; the date, time, and nature of the injury and the names of witnesses; the address where the injury occurred and how and why it occurred; the type, dates, and amounts of workers'

all documents in the investigative files are excepted from required public disclosure by section 552.101 of the Open Records Act, in conjunction with article 8308-2.31 of the act. We conclude otherwise.<sup>3</sup>

Section 552.101 of the Government Code excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Section 402.083, Labor Code, provides in pertinent part:

(a) Information in or derived from a claim file *regarding an employee* is confidential and may not be disclosed by the commission except as provided by this subtitle.<sup>4</sup> [Emphasis and footnote added.]

---

(footnote continued)

compensation payments received by the employee; and the number the commission assigned to the employee's claim file.

Given the preliminary nature of the administrative hearings, the files do not contain final administrative decisions. They do include, however, the notices of the administrative violations, the school district's written requests for hearings, the letters from the hearings officers to the attorneys for the parties informing them of scheduled hearings, and any orders to produce documents. The included documents indicate in general the employer's name, the employer's insurance carrier, if one, the carrier's number, the tracking number and code number assigned to the alleged violation, and the sections of the act allegedly violated, and where appropriate, the claimant's name and date of injury.

<sup>3</sup>You also assert that the documents are excepted by sections 3(a)(3), 3(a)(8), and 3(a)(11) of the Open Records Act (now sections 552.103(a), 552.108, and 552.111 of the Government Code). We have addressed the applicability of those sections in OR93-549 (September 13, 1993). In OR93-549, issued simultaneously with this opinion, we conclude that some of the documents are excepted by Government Code section 552.103(a) and that section 552.108 is inapplicable to the balance of the documents. We also conclude that we need not address section 552.111 since the documents marked as excepted under section 552.111 are those excepted by section 552.103(a). Accordingly, we limit our discussion and conclusions here to the documents in the investigative files not excepted from disclosure under section 552.103(a) of the act.

<sup>4</sup>You assert in your request letter that the Open Records Act is inapplicable to claim file information. Section 401.021(3) of the act makes the Open Records Act applicable to all records of the commission "[e]xcept as otherwise provided by this subtitle." However, neither the confidentiality provisions in the act discussed in this opinion, nor the only other reference in the act to the Open Records Act (section 410.105(c), Labor Code) expressly states that the Open Records Act does not apply. Nor do they conflict irreconcilably with the enforcement or penalty provisions of the Open Records Act since they merely accord confidentiality to certain information for purposes of section 552.101. *See, e.g.*, Gov't Code §§ 552.301 (duty of governmental body to request an attorney general's opinion); 552.352 (penalty for release of confidential data).

We do, nevertheless, agree with your assertion that the act's exceptions for information made confidential by the act prevail over the general access provisions of the Open Records Act. Open Records Decision No. 598 (1991) at 5 (statutes governing access over specific subset of information prevail over general access provisions of the Open Records Act). We have not been advised that any of those exceptions apply to the information at issue here. *See, e.g.*, Labor Code § 402.083(b) (excepting information concerning an employee finally adjudicated of wrongfully obtaining payment under the act); *id.* § 402.085 (including exceptions for release of claim information to regulatory bodies).

Confidential claim information "remains confidential when released to any person, except when used in court for the purposes of an appeal." *Id.* § 402.086(a). Furthermore, any person who knowingly, intentionally, or recklessly distributes such information commits a class A misdemeanor offense. *Id.* § 402.091.

The phrase "regarding an employee" in section 402.083 could be read to describe the type of claim file accorded complete confidentiality or to describe the type of information in or derived from a claim file that is accorded confidentiality. The latter construction is more consistent with the language of the act read as a whole and its legislative history. *State v. Terrell*, 588 S.W.2d 784 (Tex. 1979) (entire statute is examined to determine legislative intent); *Sexton v. Mount Olivet Cemetery Ass'n*, 720 S.W.2d 129 (Tex. App.—Austin 1986, writ ref'd n.r.e.) (questioned part is construed in light of intent ascertained from view of statute as a whole); *see also* discussion of legislative history beginning on page 6 *infra* on insertion of phrase "regarding the employee" and addition of other language indicating intent only to protect the identities of employees and their beneficiaries.<sup>5</sup>

Under the latter construction, the phrase could be construed broadly to make confidential any information "in or derived from a claim file" that relates to the employee, even information which only indirectly relates to the employee, such as the name and address of the claimant's employer and the dates and nature of the employer's alleged violations of the act. In the alternative, the phrase "regarding an employee" could be construed narrowly to protect only information "in or derived from a claim file" that explicitly or implicitly reveals the claimant's identity. This construction would prevent the release of the employer's identity or the dates and nature of the employer's alleged violations of the act in the rare instances where its release would implicitly disclose the claimant's identity. The alternative construction is more consistent with the language of the act read as a whole and its legislative history.

### Review of the Act

We first turn to the act. Other pertinent confidentiality provisions appear in sections 402.090, 411.034, and 413.007(c) of the act. Section 402.090 applies to all governmental agencies, including the Texas Workers' Compensation Research Center (the "center"). The center has access to public as well as confidential information in the

---

<sup>5</sup>Attorney General Opinion DM-181 (1992) could be read to suggest that the provision now found at section 402.083(a) protects an entire claim file and any information derived from it. That opinion, however, concerned employee injury reports that were not required by law to be filed with the commission and thus were not part of a claim file for purposes of that section. While language in Attorney General Opinion DM-181 may be read to construe the phrase "regarding an employee" to modify "claim file," that opinion did not expressly address the construction of the phrase "regarding an employee" since the reports, though they concerned employee injuries, were not "in or derived from a claim file."

commission's files and the files of other agencies as required to achieve its objectives.<sup>6</sup> Section 409.090 provides that

[t]he commission, the research center, or any other governmental agency may prepare and release statistical information if *the identity of an employee is not explicitly or implicitly disclosed*. [Emphasis added.]

Subchapters B, C, and D, of Labor Code chapter 411 establish the division of workers' health and safety within the commission and require it to develop a job safety information system and an extra-hazardous employer program. The job safety information system incorporates various data relating to on-the-job injuries. Labor Code §§ 411.031 - 411.033. Included in the system are the following: age, sex, wage level, occupation, and insurance company payroll classification of the injured employees; nature, source, severity and cause of the injuries; number of prior workers' compensation claims filed by the employees; and prior loss history and classification codes of the employers. *Id.* § 411.033(1) - (3), (6) - (9). Section 411.034 expressly provides "[t]he *identity of an employee* in a report filed under section 411.032 is confidential and may not be disclosed as part of the job safety information system." (Emphasis added.) Clearly, this provision by its terms does not protect an employer's identity unless release of its name would implicitly identify the employee. Nor does any provision of subchapter D, which requires the division to identify extra-hazardous employers, make such information confidential. Section 411.050 merely restricts the admissibility of the identification of employer as an extra-hazardous employer in judicial proceedings.<sup>7</sup>

Subchapter A, chapter 413 of the Labor Code establishes the division of medical review within the commission and requires it to ensure that health care providers and insurance carriers comply with the commission's rules, medical policies, and fee guidelines. The division must maintain a statewide data base to use in its review so that "practices and patterns in medical charges, actual payments, and treatment protocols" are detected and "medical costs" are controlled. *Id.* § 413.007(b). Section 413.007(c) expressly provides that:

The division shall ensure that the data base is available for public access for a reasonable fee established by the commission. *The*

---

<sup>6</sup>Labor Code § 404.010 (stating confidential information is "accessible to the research center under rules of confidentiality and remains confidential"). The center is required to conduct and publish studies on workplace health and safety issues, insurance rates, and workers' compensation litigation and benefits. *Id.* § 404.002. It was established by Senate Bill 1, the bill that also enacted sections 402.083, 411.034 and 413.007. See text *infra* beginning at page 6.

<sup>7</sup>Identification as an "extra-hazardous employer" means "[a]n employer whose injury frequencies substantially exceed those that may reasonably be expected in that employer's business or industry." Labor Code § 411.041(b). Section 411.050 makes such an identification admissible only if the commission's determination of an employer's non-compliance with subchapter D has not been reversed or superseded at the time of the events giving rise to the judicial proceeding.

*identities of injured workers and beneficiaries may not be disclosed.*  
[Emphasis added.]

This provision does not by its terms protect the identity of the employer except to the extent necessary to protect the identities of injured workers and their beneficiaries. Nor does section 413.008(b), which provides that the commission must keep confidential all "information that is confidential by law," expressly make such information confidential.<sup>8</sup>

Sections 402.090 and 411.034 protect only the identities of the employee claimants, while section 413.007(c) protects both the identities of the employees and their beneficiaries. If the act is read as a whole, it is more consistent with the narrow scope of these provisions to construe the phrase "regarding the employee" in section 402.083(a) narrowly to limit its protection only to information in or derived from a claim file that explicitly or implicitly discloses the identities of employee claimants.

### **Review of the Legislative History**

This construction is also consistent with the legislative history of Senate Bill 1, the bill that enacted these four articles.<sup>9</sup> The 71st Legislature adopted Senate Bill 1 in 1989 during its second called session. Acts 1989, 71st Leg., 2d C.S., ch. 1, at 1. As summarized below, the history of the bill indicates that the legislature intended to change prior law by adding language to the various confidentiality provisions that protected only the identities of employees or their beneficiaries. This summary also discloses that the legislature considered and finally rejected language broadening the confidentiality

---

<sup>8</sup>Section 413.008(a) requires insurance carriers to provide to the commission's division of medical review requested information on health care services, treatment, and fees. Even assuming section 413.008(b) protects from disclosure information other than that requested under section 413.008(a), it only protects information made confidential by some other law. We are not aware of any law expressly making the employer information at issue here confidential.

<sup>9</sup>Senate Bill 1 also amended article 5.58 of the Texas Insurance Code. Acts 1989, 71st Leg., ch. 1, § 13.05, at 81-83. Articles 5.58(c) and (f), as added by Senate Bill 1, require insurance companies to submit certain statistical reports to the State Board of Insurance. *Id.* at 82-83. In accordance with article 5.58(c), the reports include the social security numbers of the injured employees, their hazard classifications, the dates and severity of their injuries, and amount and type of benefits paid. *Id.* at 82. Subsection (d) of article 5.58, as added, provides in pertinent part:

A person may not distribute or otherwise disclose a social security number or any other information collected under Subsection (c) of this article which would disclose the identity of any claimant.

*Id.*

provisions in two of the four sections--411.034 and 413.007(c)--to protect the identities of persons other than employees and their beneficiaries.<sup>10</sup>

### Regular Session

The 71st Legislature began its consideration of the workers' compensation laws during its regular session with House Bill 1. The confidentiality provision for employee claim files in House Bill 1 remained unchanged throughout the house's consideration of the bill. That provision provided "[i]nformation in a worker's claim file is confidential and may not be disclosed except as provided in this section." See H.B. 1, 71st Leg., §§ 11.02, 12.02 (1989) (as introduced, reported from committee, and engrossed in the house in Bill File on H.B. 1) (available from Legislative Reference Library). This language was generally understood to reflect current law, which made confidential *all* information in an employee's claim file.<sup>11</sup> No version of House Bill 1 considered in the house contained a confidentiality provision for information collected by the research center or as part of the

---

<sup>10</sup>Senate Bill 1 substantially revised the workers' compensation laws. It concluded a lengthy legislative review of the workers' compensation laws that accelerated in 1987 with the establishment of the Joint Select Committee on Workers' Compensation Insurance by the 70th Legislature. H.C.R. 27, 70th Leg., 2d C.S., Acts 1987, at 920. The committee's work is summarized in its report to the 71st Legislature. Jt. Select Comm. on Workers' Comp. Ins., A REPORT TO THE 71ST LEGISLATURE (Jan. 1, 1989); see also *id.*, SUMMARY OF THE RESEARCH PAPERS OF THE JOINT SELECT COMMITTEE ON WORKERS' COMPENSATION INSURANCE (Oct. 1988); House Research Org., AN INTRODUCTION TO WORKERS' COMPENSATION IN TEXAS (Special Legislative Report No. 146 (Dec. 7, 1988)); House Select Interim Comm. on Workers' Comp. Ins., A REPORT TO THE 70TH LEGISLATURE (Jan. 1987). See generally Attorney General Opinions DM-180, DM-124 (1992) (discussing other provisions of revised laws).

Senate Bill 1 repealed the general workers' compensation statute, article 8307, V.T.C.S. See Acts 1989, 71st Leg., 2d C.S., ch. 1, § 16.01(10), at 114. Section 9a(a) of article 8307, which was enacted by Senate Bill 1275 in 1977, provided that "information in a worker's claim file is confidential and may not be disclosed except as provided in this section." See Acts 1977, 65th Leg., ch. 801, § 3. Section 9a was enacted in response to the Texas Supreme Court's decision in *Industrial Found. of the S. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The court in that decision held that the predecessor to the commission, the Industrial Accident Board (the "board"), could not prevent by board rule the release under the Open Records Act of the identity of employees who had filed workers' compensation claims despite the allegation that the requesting entity or its employer members intended to blacklist those employees. 540 S.W.2d at 673 n.1; see also House Study Group, Bill Analysis of C.S.H.B. 1275, Daily Floor Report at 2 (March 25, 1977) (bill would discourage blacklisting employees). Prior decisions of this office have consistently ruled that the literal language of section 9a(a) of article 8307 made confidential *all* information in an employee's claim file. See Attorney General Opinions JM-966 (1988); MW-202 (1980); Open Records Decision No. 533 (1989) (noting statutory exceptions where applicable).

<sup>11</sup>See similar language of V.T.C.S. art. 8307, § 9a(a) quoted in note 10 *supra* and Attorney General Opinions cited therein; see also House Comm. on Bus. and Commerce, Bill Analysis to H.C.S.H.B. 1, at 22 in Bill File on H.B. 1, 71st Leg. But compare H.C.S.H.B. 1, § 12.02(i) (authorizing disclosure of statistical information if "name or identity of injured employee" not disclosed) with V.T.C.S. art. 8307, § 9a(n) (Acts 1977, 65th Leg., ch. 801, § 3, at 2008) (authorizing disclosure of statistical information if "name or identity of any person" disclosed).

job safety information system or the data base maintained by the medical review division. *See e.g., id.* (arts. 6, 7, 8, 9 of H.B. 1 as introduced, reported from committee, and engrossed).<sup>12</sup>

The Texas Senate made considerable changes to House Bill 1 during the regular session. *See S.C.S.H.B. 1, Bill File to H.B. 1, 71st Leg. (1989).*<sup>13</sup> Section 2.31(a) of the senate committee substitute provided

Information in or derived from a claim file *regarding an employee* is confidential and may not be disclosed by the commission except as provided by this Act.

S.C.S.H.B. 1 at 25 (emphasis added), Bill File to H.B. 1. That language was finally enacted during the second called session and codified as article 8308-2.31(a). The language currently codified as section 402.090, Labor Code, which authorizes the release of statistical information "if *the identity of an employee* is not explicitly or implicitly disclosed" also first appeared in the senate committee substitute as section 2.38. S.C.S.H.B. 1 at 30 (emphasis added).<sup>14</sup>

Related changes were made in the senate committee substitute's provisions concerning the job safety information system and the data base for the medical review division.<sup>15</sup> A committee amendment was proposed and adopted to amend section 7.02(b),

---

<sup>12</sup>During the hearings in the house, the chairman of the Committee on Business and Commerce asked several times if an employee could obtain under House Bill 1 information regarding an employer's safety record and the claims filed against him. Hearings on H.B. 1 Before the House Comm. on Bus. & Commerce, 71st Leg. (Feb. 20, 1989) (tape available from House Comm. Services Office). In response, he was told that the information would be available as part of the job safety information system and that it would be "open records" under the bill. *See, e.g., id.* (testimony of Bobby Gierisch and Pam Beachley, former executive director of and counsel to interim Jt. Select Comm. on Workers' Comp. Ins.).

<sup>13</sup>The senate met as a committee of the whole to consider House Bill 1 during the regular session. *See Senate Rules*, art. XVIII, at 65 (1989 rules). That committee or its subcommittee considered two different senate committee substitutes, commonly known as the Glasgow substitute and the Lyon substitute after their sponsors, Senators Bob Glasgow and Ted Lyon. On May 19, 1989, the committee voted to report the Lyon substitute, as amended in committee, to the floor of the senate. Hearings on H.B. 1 Before the Senate Comm. of the Whole, 71st Leg., (May 19, 1989) (transcript and tape available from Senate Staff Services Office). Provisions of the Lyon substitute are discussed above. The Lyon substitute thereafter passed the senate as amended during second reading. *See, e.g., S.J. of Tex.*, 71st Leg., at 1832-33 (May 22, 1989). The house refused to concur in the changes made in the senate, and the regular session ended without passage of a workers' compensation bill.

<sup>14</sup>*Cf. V.T.C.S. art. 8307, § 9a(n)* quoted in part in note 11 *supra*.

<sup>15</sup>During the Senate debate on House Bill 1, testimony was presented about the problem of employers blacklisting workers' compensation claimants. In particular, Joe Gagen, the chairman of the Industrial Accident Board, testified his agency had historically construed the law to restrict release of claimants' names to prevent "pooling of names for black listing purposes." Hearings on H.B.1 Before the Subcomm. on Workers' Comp., Senate Comm. of the Whole, 71st Leg., (April 23, 1989) (tape and

the provision of the senate committee substitute requiring the establishment of the job safety information system, to except from the system's data base "*the identity of the employee*." Hearings on H.B. 1 Before the Subcomm. on Workers Comp., Senate Comm. of the Whole, 71st Leg., (Testimony of and amendment by Sen. Cyndi Krier) (May 8, 1989); see S.C.S.H.B. 1, at 146 in Bill File to H.B. 1.<sup>16</sup> There was also testimony indicating a need to have a publicly available data base that identified health care providers who charged workers' compensation claimants more for their services but at the same time protected the claimants' names and identities. *Id.* (Testimony of Ron Luke) (April 17, 1989). Section 8.01(c)(3) was apparently added to the substitute to address this problem. As added, section 8.01(c)(3) provided the medical review division's data base would be accessible to the public for a fee "except that *the identities of injured workers and beneficiaries* may not be disclosed." S.C.S.H.B. 1, at 161 in Bill File to H.B. 1 (emphasis added). Identical language was subsequently enacted during the second called session and codified as article 8308-8.01(c)(3) and is now located at Labor Code, section 413.007(c).

While the language emphasized in the preceding two paragraphs indicates that the legislature intended to protect the identities of employee claimants or their beneficiaries, it suggests no such intent with regard to the identities of employers alleged to have violated the act. Furthermore, the legislature subsequently rejected statutory language that would have expanded the confidentiality provision for information in the job safety information system to protect the identities of employers and the confidentiality provision for information in the medical review division's data base to protect the identities of attorneys, doctors, health care providers, or health care facilities.<sup>17</sup>

### First Called Session

During the first called session of the 71st Legislature, both the House and the Senate introduced bills revising the workers' compensation laws. House Bill 1, as introduced and reported from the house's committee on Business and Commerce, contained not only the exception in section 7.02(b) for the identity of the employee, but

---

(footnote continued)

transcript available from Senate Staff Services Office). No testimony was given concerning problems with the release of the identities of the claimants' employers.

<sup>16</sup>As amended, section 7.02(b) of the substitute stated the "system shall include a comprehensive data base that incorporates all pertinent information relating to each workers' compensation claim, except the identity of the employee."

<sup>17</sup>As indicated in the text at page 7, sections 2.31(a) and 2.38 were subsequently enacted during the second called session and codified as articles 8308-2.31(a) and 8308-2.38 of the act as they appeared in the Lyon substitute adopted by the senate during the regular session. Article 5.58 of the Insurance Code was also amended during the regular session in the senate subcommittee hearings to protect from disclosure social security numbers and other information that would identify claimants. Hearings on H.B. 1 Before the Subcomm. on Workers' Comp., Senate Comm. of the Whole, 71st Leg., (April 27, 1989) (Testimony of and amendment by Bobby Gierisch). The amended language was enacted during the second called session and codified as article 5.58(d) of the Insurance Code.



also a new section 7.02(d) that provided in pertinent part that "[t]he identity of the *employer* is confidential information." See H.B. 1 and H.C.S.H.B. 1, Bill File to H.B. 1, 71st Leg., 1st C.S. (emphasis added) (available from Legislative Reference Library). Those two versions of House Bill 1 during the first called session also contained the provision in section 8.01(c)(3) that "the identities of injured workers and beneficiaries shall not be disclosed" as part of the medical review division's data base. During floor debate in the house, House Bill 1 was tabled and the senate bill considered instead. See H.J. of Tex., 71st Leg., 1st C.S., at 61, 207 (July 5, 1989).

In contrast to the house bill, Senate Bill 1, as introduced, reported from committee, and sent to the house during the first called session, excepted only the identity of the employee and *not* the employer from the job safety information system. See Bill File to S.B. 1, 71st Leg., 1st C.S. (§ 7.03 or 7.04 of various versions). Section 8.01(c)(3), however, in all three versions of Senate Bill 1 in the senate, excepted not only the identities of injured workers and their beneficiaries, *but also* the identities of attorneys, doctors, and other health care providers. *Id.* (§ 8.01).

The house passed a complete floor substitute for Senate Bill 1 during second reading of the bill. H.J. of Tex., 71st Leg., 1st C.S., at 62, 206 (July 5, 1989). The provision in the floor substitute requiring the establishment of a job safety information division excepted *both* the identities of employers and employees. *Id.* at 125 (§ 7.03(b)). Section 8.01(c)(3) in the floor substitute, however, made confidential only the identities of injured workers and beneficiaries. H.J. of Tex., 71st Leg., 1st C.S., at 133. Despite consideration of their differences in conference committee, the house and senate subsequently adjourned without passage of a workers' compensation bill.

### Second Called Session

The senate introduced during the second called session the legislation finally enacted to revise the workers' compensation laws. As introduced and reported from the committee in the senate, Senate Bill 1 excepted in section 7.03(c) "the identity of the employee" from the job safety information system. S.B. 1 and S.C.S.S.B. 1, Bill File to S.B. 1, 71st Leg., 2d C.S. (available from Legislative Reference Library). During second reading in the senate, this exception was struck from section 7.03(c) and a new section 7.03(d) added that provided "[t]he identity of the employee is confidential and shall not be disclosed as a part of the job safety information system." S.J. of Tex., 71st Leg., 2d C.S., at 39 (Nov. 20, 1989) (floor amendment 1); see Debate on S.B. 1 on the Floor of the Senate, 71st Leg., 2d C.S. (Nov. 20, 1989) (describing change as one bringing act "in conformity"). Section 8.01(c)(3) was also amended on the floor during second reading. In the bill as introduced and reported from committee, it protected only the identities of injured workers and beneficiaries. The amended section, however, protected "[t]he identities of injured workers, beneficiaries and *health care facilities*." S.J. of Tex., 71st Leg., 2d C.S., at 49 (emphasis added) (Nov. 20, 1989) (floor amendment 18); see Debate on S.B. 1 on the Floor of the Senate, 71st Leg., 2d C.S. (Nov. 20, 1989) (describing amendment as protecting facilities from unfair competition).

The House committee substitute for Senate Bill 1 included section 7.03(c) and (d) as amended in the senate and section 8.01(c)(3) as reported from committee in the senate. H.C.S.S.B.1 in Bill File to S.B.1, 71st Leg., 2d C.S. No amendments were proposed or enacted during second or third reading that changed these provisions. *See, e.g., H.J. of Tex., 71st Leg., 2d C.S., at 301-19 (Nov. 29, 1989).* Thus, the legislature finally enacted confidentiality provisions for information collected as part of the job safety information system or the data base for the medical review division that protected only the identities of employees or their beneficiaries and not the identities of employers or various other persons such as health care providers or facilities.

### Summary and Conclusion

To summarize, the act viewed as a whole as well as its legislative history indicates that the legislature intended to make confidential only information that explicitly or implicitly disclosed the identities of employees filing workers' compensation claims or their beneficiaries. In particular, the 71st Legislature's rejection during its first and second called sessions of language broadening two of the four confidentiality provisions to protect persons other than employees and their beneficiaries indicates the legislature did not intend to protect the identities of employers alleged to have violated the act unless disclosure of that information would implicitly disclose the identities of employee claimants. Thus, we construe the phrase "regarding the employee" (now codified at section 402.083, Labor Code), narrowly to limit its protection only to information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims. Whether specific information implicitly discloses the identity of a particular employee must be determined on a case-by-case basis.<sup>18</sup>

Accordingly, you must withhold the portions of the documents that *explicitly* disclose the identities of the claimants, *i.e.*, the claimants' names, spouses' names, social security numbers, and home telephone numbers and addresses, pursuant to section 552.101 of the Open Records Act in conjunction with section 402.083(a).<sup>19</sup> You must also withhold the portions of the documents that *implicitly* disclose the claimants' identities. We believe this would include the birthdate of the claimant. Given that the documents relate to alleged violations by an employer with a large work force, we conclude that the release of the identity of the employer and the nature and date of the alleged violations will not, in this case, implicitly disclose the identities of the claimants.

---

<sup>18</sup>As indicated in note 2 *supra* the final decisions of the administrative hearing officers are not included in the investigative files at issue here. Thus, we need not address in this opinion the effect of section 402.021(1) of the act, which provides that section 4(a)(3) of APTRA is inapplicable to commission hearings. *See V.T.C.S. art. 6252-13a, § 4(a)(3)* (requiring state agencies to make all final decisions "available for public inspection").

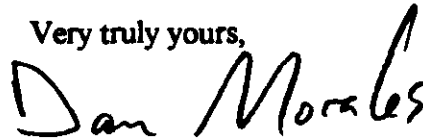
<sup>19</sup>As indicated in note 3 *supra* our conclusions here are limited to the documents in the files that are not protected under section 552.103(a), Government Code.

With the exception of the information identified in the previous paragraph, the requested information must be released.<sup>20</sup>

### S U M M A R Y

The Texas Workers' Compensation Act, section 402.083(a), Labor Code makes confidential only information in or derived from a claim file that explicitly or implicitly discloses the identity of the employee filing the workers' compensation claim. Accordingly, information in or derived from a claim file that reveals the identity of an employer alleged to have violated the Texas Workers' Compensation Act and the nature of the violation may not generally be withheld pursuant to section 552.101 of the Government Code. Whether information explicitly or implicitly discloses the identity of an employee must be determined on a case-by-case basis.

Very truly yours,



DAN MORALES  
Attorney General of Texas

WILL PRYOR  
First Assistant Attorney General

MARY KELLER  
Deputy Attorney General for Litigation

RENEA HICKS  
State Solicitor

MADELEINE B. JOHNSON  
Chair, Opinion Committee

Prepared by Celeste A. Baker  
Assistant Attorney General

---

<sup>20</sup>The commission has also raised sections 3(a)(1), 3(a)(8), and 3(a)(11) exceptions to the Open Records Act. Some of the documents requested are subject to section 3(a)(3), as they involve pending litigation. We do not address sections 3(a)(8) and 3(8)(11), however, as the purpose of this Open Records Decision is to construe section 402.083(a). See OR93-549.